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Before the
Federal Communications Commission
Washington, DC

Federal Communications Commission
Office of Secretary

In the Matter of) MM Docket No. 87-268
)
Advanced Television Systems and Their)
Impact upon the Existing)
Television Broadcast Service)

To: The Commission

PETITION FOR RECONSIDERATION

Sunbelt Television, Inc., licensee of Station KHIZ(TV), Barstow, California, by its attorney, submits a petition seeking reconsideration of certain aspects of the Fifth Report and Order, FCC 97-116 (April 21, 1997) and Sixth Report and Order, FCC 97-115 (April 21, 1997) in this proceeding. With respect thereto, the following is stated:

1. The entire Digital Television ("DTV") proceeding has been the subject of much debate. While there seems to be no question that DTV should be implemented within a timetable that will make utilization of the technology reasonably accessible to the public, the methodology and precise spectrum that should be assigned, and specifically what channels and what assumptions should be used in assigning the channels, all must still be thoroughly studied in order to assure that there is no inadvertent harm inflicted on existing broadcasters or the public.

2. KHIZ is a full-power television station licensed to Barstow, California and serving the surrounding area. For a time, due to signal shadowing problems caused by the San Gabriel Mountains, KHIZ did not provide service beyond the San Gabriel Mountains. Now, through installation of a TV relay system and microwave system, it has been ordered by the Commission that cable television systems located on the other side of the San Gabriel Mountains are now

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required to carry KHIZ. See Comcast Cablevision of Inland Valley, Inc., DA 97-911 (Chief, Cable Services Bureau, May 2, 1997); Marks CableVision and TCI Cablevision of California, DA 97-910 (Chief, Cable Services Bureau, May 2, 1997); Sunbelt Television, Inc., DA 97-425 (Chief, Cable Services Bureau, Feb. 27, 1997). At the present time, the limits of KHIZ's *predicted* Grade B contour is used to convey certain rights to television broadcasters such as KHIZ; the predicted Grade B contour determines, for example, the areas within which fill-in booster television stations can be established, and also determines (in a broad sense) those areas in which "must-carry" cable television rights will be protected.¹

3. Nevertheless, the Commission's DTV allotment plan only is replicating existing stations' service areas as computed using the "Longley-Rice" method of service prediction, which takes existing terrain into account. The end result of utilizing this methodology is that certain existing stations such as KHIZ may lose the rights they currently have to provide service to their *entire* Grade B contour as currently predicted under standard prediction methods, and thereby will lose the right to provide service to that entire area in situations where the DTV service area (as predicted by Longley-Rice) is smaller than the area within the station's current Grade B contour (as predicted by standard prediction methods). These changes will conceivably cause existing broadcasters, such as KHIZ, to lose their current rights to make their *actual*

¹ Under the Commission's Rules, requests for modifications of Areas of Dominant Influence ("ADI") generally are rejected as long as a station places at least a predicted Grade B contour over a cable system's community. Report and Order in MM Docket No. 92-259, 8 FCC Rcd 2965, 2981 (1993). "Grade B service demonstrates service to cable communities and serves as a measure of a station's natural economic market." Rivkin/Naragansett South Florida, CATV Limited Partnership, DA 96-2016 n.59 (Chief, Cable Services Bur. 1996). "We believe that television stations actually do or logically can rely on the area within Grade B contours for economic support." Amendment of Section 76.51 (Orlando-Daytona-Melbourne, and Cocoa, Florida), 57 R.R.2d 685, 690 ¶ 14 (1985).

service conterminous with their *current predicted-Grade-B* contour, e.g., through the establishment of TV booster stations to "fill-in" gaps within their *current-Grade-B* contour which are blocked by mountainous terrain in those cases where the *new DTV* contour does not match with the *former ATV* predicted Grade B contour -- the net result will be that the area within which the broadcaster will be authorized to provide service will be *reduced*. Similarly, if the contour of the DTV allotment goes less far than the current NTSC predicted Grade B contour, this will cause ADIs (as determined under the Commission's cable television ADI modification rules (47 C.F.R. § 76.59)) to which some stations are entitled under current policies² to shrink, thereby causing such stations eventually to lose protection under the Commission's "must-carry" rules³ -- here, again, the net result will be that the area within which the broadcaster will be permitted to provide service will be *reduced*, and the amount of competitive local service available to the public also will be reduced.

4. For this reason, it is not enough that the FCC replicate existing *service* areas using the Longley-Rice terrain sensitive model. Broadcasters currently are permitted to provide service to the entirety of their *existing* predicted Grade B *contour*. The area within which those rights can be exercised should not be reduced due to the implementation of DTV. As the FCC has noted, even in cases where there are areas where reception currently is difficult due to terrain obstacles (as would be taken into account using the Longley-Rice prediction method), "[t]his, however, does negate the fact that [such] communities are within the area [such] stations have

² See footnote 1.

³ If the Commission alters a station's ADI to eliminate a community from the station's ADI, the cable system no longer is required to carry the station under the Commission's must-carry rules.

been licensed to serve." Ventura County Cablevision, 1 Comm. Reg. 161, 169 n.27 (Cable Bur. 1995). That licensed area should not be arbitrarily, unilaterally, or inadvertently, reduced.

5. Therefore, although the Commission currently is able to assert its belief that 95-100% of existing service areas will be replicated, this data may be misleading. In actuality, additional service areas that broadcasters may already be providing service to or else *have the right* to provide service to in the future, may not be replicated in the FCC's current allotment model. For this reason, the FCC must make allowances to ensure that the existing rights of full-service to provide service, by *whatever* means, throughout existing *predicted* service areas, is preserved, even after full implementation of the DTV Plan. There already will be great costs that will have to be borne by broadcasters for the equipment and promotion necessary to implement DTV. They also should not have to be faced with smaller permitted service areas as a result of the implementation.

WHEREFORE, it is respectfully requested that the Commission reconsider its prior determinations, and revise its Report and Order in accord with the information provided herein.

Respectfully requested,

SUNBELT TELEVISION, INC.

By: 

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